HON'BLE SRI JUSTICE P.S. NARAYANA

W.V.M.P.No.106/2006

&

W.P.No.8054 of 2005

Date : 15-11-2006

Between:

Rajakajana Sangham
represented by its President
T.Paddala Vekayya .. Petitioner

and

Government of Andhra Pradesh,
Represented by its Principal Secretary
Panchayat Raj and Rural Development
(PTS-IV) Department
and others .. Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

W.V.M.P.No.106/2006
&
W.P.No.8054 of 2005

ORDER:

1. W.V.M.P.No.106/2006 filed by respondents 1 to 3 in the Writ Petition to vacate the interim order granted by this Court in the Writ Petition dated 13-4-2005 is coming up for hearing. The Counsel on record made a request for disposal of the Writ Petition itself finally. Hence the Writ Petition is being disposed of finally.

2. The Writ Petition is filed praying for the relief of writ of mandamus by the writ petitioner-Rajaka Sangham represented by its President, declaring the proceedings of 1st respondent in Memo No.10936/Pts/A-1/2002-03 dated 29-12-2004 as illegal, arbitrary and contrary to Law and to pass such other suitable orders.

3. Sri Chidambaram, the learned Counsel representing the writ petitioner had taken this Court through the averments made in the affidavit filed in support of the Writ Petition and would maintain that the 1st respondent in the Writ Petition had not given adequate opportunity at the hearing. The learned Counsel also would contend that the recommendations of the District Collector had not been taken into consideration while making the impugned order. The Counsel also pointed out to other factual details and would maintain that inasmuch as several Rajaka families are dependent on the caste profession only, it would be just and appropriate to maintain the tank as it is in stead of allotting an extent of Acs.1-32 cents only of the tank in R.S.No.19. The learned Counsel also had taken this Court through the contents of the counter affidavit filed in support of the vacate application and would contend that even in the light of the stand taken in the counter affidavit by respondents 1 to 3 in the Writ Petition the matter definitely requires reconsideration.

4. The learned Assistant Government Pleader for Panchayat Raj

had taken this Court through the averments made in the counter affidavit and would submit that as can be seen from the impugned order, reasonable and proper opportunity had been given and in fact it had been recorded that both the parties argued and after taking into consideration all the aspects, the Government was pleased to direct allotment of an extent of Acs.1-32 cents of tank in R.S.No.19 to writ petitioner-Rajaka Sangham out of the total extent of Acs.4-38 cents by forming a bund.

5. Sri Srinivas, Counsel representing Sri Dammalapati Srinivas, the learned Counsel for the 4th respondent in the Writ Petition would submit that when the Government on careful consideration had taken a decision and allotted an extent of Acs.1-32 cents only of the tank in R.S.No.19 to the writ petitioner-Rajaka Sangham out of the total extent of Acs.4-38 cents, keeping public interest in view, the writ Court normally not to interfere with. The learned Counsel placed strong reliance on a decision of this Court in **Rajaka Seva Sagham, Medikonduru Vs. Revenue Divisional Officer, Guntur and another** [1].

6. Heard the Counsel.

7. The writ petitioner-Rajaka Sangham represented by its President Paddala Venkayya, had averred in the affidavit filed in support of the Writ Petition that there are nearly 30 Rajaka families in the village of Mupparthipadu, Ganapavaram Mandal, West Godavari District and their livelihood is only their caste profession and they are all members of the petitioner-Rajaka Sangham. It is also averred that in the village of Mupparthipadu there are three tanks out of which one tank known as Thummala Cheruvu was set apart to the petitioner as per the Government orders in vogue and the said tank is in an extent of Acs.4-38 cents in R.S.No.19 of Mupparthipadu village and the said tank is being leased out to the petitioner as per the upset price fixed by the 1st respondent from

Fasli 1400. It is stated that since then the members of the petitioner have been in possession and enjoyment of the said tank by paying the upset price fixed by the respondents. It is also stated that while the matters stood thus the Gram Panchayat passed a resolution on 3-10-1989 proposing to divide the said tank into two parts. Aggrieved by the proposed action of the Gram Panchayat the writ petitioner-Rajaka Sangham had filed W.P.No.20259/99 declaring the action of the Gram Panchayat in taking steps to divide Thummala Cheruvu into two parts as illegal and for other reliefs. This Court was pleased to grant interim direction not to divide the said tank and ultimately disposed of the same directing the petitioner-Sangham to challenge the resolution of the Gram Panchayat dated 3-10-1999 under Section 128 of A.P. Panchayat Raj Act 1994 before the competent authority and accordingly the petitioner-Sangham filed Appeal before the District Collector questioning the resolution of the Gram Panchayat dated 3-10-1999 and the District Collector disposed of the same with a direction to the Gram Panchayat not to divide the tank and further directed to lease out the same to the petitioner. It is also stated that questioning the order of the District Collector dated 22-2-2001 the Gram Panchayat had filed W.P.No.4982/2001 before this Court and this Court was pleased to dispose of the same directing the District Collector to make his report to the Government as contemplated under sub-section (3) of Section 246 of A.P. Panchayat Raj Act for passing appropriate orders. It is also stated that in pursuance of the said order the District Collector had sent proposals under Section 246 of A.P. Panchayat Raj Act to the Government recommending that there are 21 Rajaka families in the village and 90% of them are depending on their caste profession and hence the division of the tank into two parts would affect the livelihood of Rajakas besides affecting the geographical features of the tank and further recommended to allot another tank also to cater to the needs of

the petitioner-Sangham. Further it is stated that the Government had taken up the issue on the basis of the proposals forwarded by the District Collector under Section 246 of A.P. Panchayat Raj Act 1994 and passed a resolution dated 29-12-2004 permitting the Gram Panchayat to divide Thummala Cheruvu into two parts and allot Acs.1-32 cents out of Acs.4-38 cents by forming a bund and the said order is impugned in the present Writ Petition on several grounds which had been averred as grounds (i) to (vi) in para-6 of the affidavit filed in support of the Writ Petition.

8. In the counter affidavit filed by the 1st respondent several of the allegations were denied. Specific stand was taken in para-2 of the counter affidavit that there is a tank in R.S.No.19 of Mupparthipadu village of Ganapavaram Mandal in an extent of Acs.4-38 cents and the local Rajakas are doing their caste profession in the said tank and they are paying the lease fixed by the Divisional Panchayat Officer and also enjoying the fishery rights. The contention of the petitioner that there are 30 Rajaka families is not correct and as per verification there are only 21 Rajaka families and 90% of the Rajaka families are doing their caste profession. Further it was averred in para-3 of the counter affidavit that the Gram Panchayat by its resolution No.25 dated 8-10-1995 and by its Grama Sabha resolution No.9 dated 3-10-1999 resolved to bifurcate the tank and earmark Ac.1-00 to Rajakas to their caste profession duly forming a bund on South-East corner. The filing of W.P.Nos.20259/99 and 28256/99 and the disposal thereof on certain directions had been admitted. It is stated that the Rajakas filed appeal before the District Collector and the Appeal was disposed of with a direction to the Gram Panchayat not to bifurcate the tank since the geological conditions are distributed and directed the Gram Panchayat to lease out the tank as per the rules in force. In para-4 of the counter affidavit it is stated that aggrieved by the orders of the District Collector, the Gram Panchayat, Mupparthipadu filed W.P.No.4982/2001 and the Sarpanch stated in the

said Writ Petition that the Thummala Tank is the source of water for about Acs.26.00 and if the tank is leased out to Rajakas disputes will arise between Rajakas and the ayacut farmers regarding the usage of water and hence the Gram Panchayat proposed to earmark Ac.1-00 duly forming a bund on the South-East corner of the tank. While disposing of the said Writ Petition this Court set aside the orders of the District Collector leaving it open to the District Collector to make his report to Government as contemplated under sub-section (3) of Section 246 of A.P. Panchayat Raj Act for passing appropriate orders. It is also further stated that basing on the directions of this Court a report was submitted to the Government with all the above facts stating that there are 21 Rajaka families in the village and it was suggested to allot alternative tank to Rajakas for their caste profession having an extent of Acs.1-50 cents which is situate near Thummala tank if the Rajakas accept pending orders of the Government. Further it is stated that the Government heard the matter on 8-12-2004 and the representatives of Rajaka Sangham, Sarpanch of Gram Panchayat, Mupparthipadu attended the said hearing before the Government and submitted their grievances and the Government issued orders to allot Acs.1-32 cents out of Acs.4-38 cents to Rajakas in the interest of revenue of the Gram Panchayat and serving the water to the need of the ayacut farmers in about Acs.26.00 and the said order is legal and made after hearing the parties concerned. Further specific stand is taken that ample opportunity had been given to both the representatives of Rajaka Sangham and also the Gram Panchayat and after hearing both the parties only the Government made the impugned order. Further it is stated that the District Collector reported that 21 Rajaka families are depending on their caste profession and since there is ayacut of Acs.26.00 under Thummala tank alternative tank having Acs.1-50 cents was suggested to be allotted to Rajakas if they agree for the same till the receipt of orders from the Government on this aspect

which they refused. In the light of the same, the Government heard the matter and passed the impugned order. Further specific stand was taken that after taking into consideration all the facts and circumstances inasmuch as the impugned order was made in the interest of Gram Panchayat, Rajaka Sangham ad also the ayacutdars, the Writ Petition is devoid of merits and the same may be dismissed.

9. Before proceeding with the further discussion, it may be appropriate to have a look at the order which is impugned in the Writ Petition and the said order dated 29-12-2004 reads as hereunder :

GOVERNMENT OF ANDHRA PRADESH
PANCHAYAT RJA AND RURAL DEVELOPMENT (PTS-IV) DEPARTMENT
Memo No.10936/Pts./A1/2002-3, Dated : 29-12-2004

Sub: Gram Panchayat, Muppartipadu – Bifurcation of Thummala Cheruvu and set apartment to Rajakas – Representation of the Sarpanch of the Gram Panchayat and Rajaka Society – Reg.

Ref: 1. From District Collector, West Godavari Lr.No.4099/2003/A6 (Pts.) dated 19-10-2004.

2. Govt. Fax Message No.10936/Pts.III/A3/2004-2, dt.27-11-2004.

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In the reference first cited the District Collector, West Godavari has reported that it is a tank in R.S.No.19 of Muppartipadu in an extent of Ac.4-38, and that the Gram Panchayat by its resolution No.25 dated 8-10-1999 and Gram Sabha Meeting in its resolution No.9 dated 3-10-1999 resolved to bifurcate the said tank and earmark one acre out of the same to Rajaka Sangham for doing their caste profession, duly forming a bund on the South East corner.

The District Collector, West Godavari has further reported that the Rajaka Sangham filed a W.P. before the Hon'ble High Court against the above resolutions, which was disposed of by the Hon'ble High Court with a direction to the petitioner to make representation to the appropriate authority questioning the resolutions. The Rajaka Sangham accordingly submitted a representation to the District Collector, West Godavari who

disposed of the same with a direction to the Gram Panchayat not to disturb the tank, and lease out the same to Rajakas.

The District Collector, West Godavari has further reported that aggrieved by the above order, the Sarpanch of the Gram Panchayat filed a W.P. which was disposed of by the Hon'ble High Court setting aside the orders of the District Collector and leaving it open to the District Collector to make a report to the Government as contemplated under sub-section (3) of Section 246 of APPR Act, 1994 for passing appropriate orders.

The District Collector has reported that as his instructions, the Dl.P.O. Eluru and MRO, Ganapavaram jointly inspected the spot and opined that since the Rajakas have to get on with their livelihood by doing their caste profession advised to allot another tank located in an extent of Ac.1-50 situate just nearer to the Thummala Tank till receipt of orders from the Government that there are 21 Rajaka Families in that village and that 90% of them are depending on their caste profession.

In the reference second cited, Govt. have issued Fax message to the District Collector, West Godavari informing that the Government desired to hear the case on 8-12-2001 and requested to intimate the Sarpanch, Gram Panchayat, Muppartipadu and representatives of Rajaka Sangham.

Hearing was held on 8-12-2004. The Dl.P.O., Eluru, Sarpanch, Gram Panchayat, Muppartipadu and representatives of Rajaka Sangham Society attended the hearing. Both the parties argued. The representatives of Rajaka Sangham were questioned as to why they require a huge tank located in an extent of Ac.4.38 when there are only 21 families who have to do their caste profession on the tank. The Rajaka Sangham had no proper answer to the above question and stated that the Gram Panchayat took the action to bifurcate the tank as a measure to revenge against them for not voting in favour of the Panchayat body members in the elections. This argument has no relevance to the issue. On the other hand, the Gram Panchayat realized an action of fishery rights for the several years, that besides, the tank is serving an ayacut of Ac.26.00 and that therefore all things (sic : allotting) the whole tank to the Rajaka Sangham badly affects the interest of the farmers and public of the area.

Government after careful examination of the matter and after hearing both the Gram Panchayat and Rajaka Sangham hereby

order that an extent of Ac.1-32 cents of the tank situated in R.S.No.19 may be allotted to Rajaka Sangham out of the total extent of Ac.4-38 cents by forming of a bund.

The District Collector, West Godavari shall take necessary action in the matter."

10. In **Delhi Water Supply & Sewage Disposal Undertaking Vs. State of Haryana** [2] the Apex Court observed that the drinking to be taken as the most beneficial use of the water and such beneficial use of drinking water cannot be made subservient to only use of water like irrigation as the use of water for drinking prevails over the other needs. In the decision referred **(1)** supra, this Court observed:

"In this case, the conflict of rights is between the Washermen for the purpose of washing clothes and the villagers for the purpose of drinking. The law gives precedence to the right of the latter and therefore, the petitioner-sangham cannot enforce any right much less a non-existing right to claim entire Ademma Tank for the purpose of washing clothes. The fact that the impugned proceedings dated 21-2-2004 allows an extent of Acs.2.11 cents exclusively for washing purposes cannot be ignored while considering the question of rationality or arbitrariness."

11. The proceedings impugned in the present Writ Petition dated 29-12-2004 already had been referred to supra and the reasons recorded appear to be self-explanatory. The fact that the tank is serving as ayacut for an extent of Acs.26.00 had been taken into consideration. It is no doubt true that at a particular point of time, the District Collector had made certain recommendations. It is not as though the 1st respondent had not taken into consideration the said recommendations made by the District Collector concerned, the 2nd respondent herein. Even otherwise, the Government on a careful consideration of all the facts involved in the matter came to the conclusion that an extent of Acs.1-32 cents in the tank

in R.S.No.19 be allotted to the writ petitioner-Rajaka Sangham out of the total extent of Acs.4-38 cents, no doubt by forming a bund. Certain orders were made in the prior Writ Petitions which had been already referred to supra. It is also pertinent to note that an offer for allotment of alternative tank was made and it appears that the writ petitioner-Rajaka Sangham was not interested in accepting the same. The stand taken by the Sarpanch also had been recorded. The rights of the ayacutdars i.e., irrigation rights concerned with agriculture are as important as the rights of the Rajaka Sangham in relation to the caste profession. Both these are more concerned with the livelihood of the respective sections of the people of the village. While balancing these rights, the Government appears to have made a just and equitable order taking the over all facts and circumstances. In the over all facts and circumstances in the light of the reasons which had been recorded in detail in the impugned order, this Court is of the considered opinion that the impugned order as such does not suffer from any illegality for the reason that the interest of ayacutdars of an extent of Acs.26.00 under the tank also had been taken into consideration. When an offer is made to the writ petitioner-Rajaka Sangham in relation to the allotment of yet another tank, in all wisdom, the writ petitioner-Rajaka Sangham could have considered the same and should have accepted. This Court is not inclined to express any further opinion relating to the other factual controversies. However, it is made clear that even at present if the writ petitioner-Rajaka Sangham is interested in having allotment of yet another tank, depending upon the facts and circumstances and also the geographical situation, the writ petitioner-Rajaka Sangham is at liberty to make appropriate representation in this regard and the same to be considered by the authorities concerned in accordance with law. Except making this observation, nothing further can be done in this matter, especially in the light of the reasons recorded by the 1st respondent that the interest of the

ayacutdars under the tank in question also may have to be safeguarded and taking the same into consideration Acs.1-32 cents of the tank in R.S.No.19 had been allotted in favour of the writ petitioner-Rajaka Sangham.

12. Accordingly with the above observations, the Writ Petition is disposed of. No costs.

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Justice P.S.Narayana

Date : 15-11-2006

L.R. copy to be marked : YES / NO

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[1] 2006(5) ALD 512

[2] AIR 1996 S.C. 2992